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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS ANTONIO HERNANDEZ,

No. C 06-07778 WHA

Petitioner,

v.

ORDER TO SHOW CAUSE

JAMES E. TILTON, and MIKE EVANS,

Respondents.

/

INTRODUCTION

Petitioner Luis Antonio Hernandez is serving fifteen years to life in California state prison. In his petition for a writ of habeas corpus and the accompanying memorandum, he has stated valid claims under 28 U.S.C. 2254. Respondents are **ORDERED TO ANSWER** the petition.

STATEMENT

Petitioner was convicted in state court of committing forcible rape of a child under 14 who was more than 10 years younger than petitioner, pursuant to California Penal Code Section 269(a). The sentencing judge imposed a sentence of fifteen years to life. Petitioner's conviction was upheld by the California Court of Appeal on November 25, 2003. In May 2005, petitioner filed a habeas corpus petition with the San Mateo Superior Court. That petition was denied on June 15, 2005. The California Court of Appeal affirmed the denial of habeas corpus

1 on September 13, 2005. The California Supreme Court denied petitioner's request for review of
2 the denial of his state habeas petition on December 21, 2005.

3 **ANALYSIS**

4 **1. STANDARD OF REVIEW.**

5 A district court may entertain a habeas petition filed by someone in custody pursuant to
6 a state-court judgment but only on grounds that he or she is held in violation of the Constitution,
7 laws or treaties of the United States. 28 U.S.C. 2254(a). A court may "issue an order directing
8 the respondent to show cause why the writ should not be granted," unless the petition is
9 baseless. 28 U.S.C. 2243. Summary dismissal is appropriate only if the petition's allegations
10 are vague, conclusory, incredible or frivolous. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th
11 Cir. 1990).

12 **2. PETITIONER'S LEGAL CLAIMS.**

13 Petitioner argues that his rights under the Sixth, and Eighth, and Fourteenth
14 Amendments were violated. *First*, petitioner contends that he was denied his right to an
15 interpreter at a pretrial hearing in which he tried to have his appointed attorney relieved and to
16 have a new attorney appointed. *Second*, petitioner contends that he was denied the assistance of
17 an interpreter at trial. *Third*, petitioner contends that he was denied the effective assistance of
18 counsel at trial when counsel: (1) failed to try to exclude inculpatory evidence and (2) failed to
19 investigate and secure the assistance of an expert who would have explained how physical
20 evidence used against petitioner actually exonerated petitioner. *Fourth*, petitioner contends that
21 he was denied the effective assistance of counsel on appeal when counsel failed to obtain a
22 transcript of the first portion of a bifurcated sentencing proceeding, thereby rendering appellate
23 review of petitioner's sentencing proceedings impossible. *Fifth*, petitioner contends that his
24 sentence constitutes cruel and unusual punishment, in light of his individual culpability and the
25 nature of his crime. Petitioner states valid claims. Respondents therefore must answer.

CONCLUSION

The **CLERK IMMEDIATELY SHALL SERVE** respondents' counsel with a copy of the petition and memorandum of points and authorities, all attachments to it, and this order.

RESPONDENTS SHALL FILE AND SERVE UPON PETITIONER, BY MARCH 5, 2007, AN ANSWER conforming to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. Respondents shall, by that date, also serve all other materials required by Habeas Local Rule 2254-6(b). The record must be indexed. If petitioner wishes to respond to the answer, he shall file a **TRAVERSE WITH THE COURT AND SERVE IT UPON RESPONDENTS WITHIN THIRTY DAYS OF SERVICE OF THE ANSWER.**

IT IS SO ORDERED.

Dated: January 3, 2007

**WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE**